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09/800,547	03/07/2001	Aurelia Maza	06640-148 US	4160

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EXAMINER	
PADEN, CAROLYN A	
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 1104

Application Number: 09/800,547
Filing Date: March 07, 2001
Appellant(s): MAZA ET AL.

Edward Squallante
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 9, 2003.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 1-27 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

4,423,084	TRAINOR et al	12-1983
5,632,596	ROSS	5-1997

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trainor (4,423,084) in view of Ross (5,632,596).

Trainor discloses making salad dressing. Table 1 and example 1 shows ingredients that include starch, acidulant, egg, oil, water and sweetener. These ingredients are mixed together and then processed in a colloid mill that includes a rotor and a stator. The claims appear to differ from the reference in the suggestion of the specific apparatus features of the colloid mill. Trainor is silent as to the measurements of the rotor and stator but the specific apparatus features of the rotor and stator are provided by Ross. Ross teaches the use of the rotor and stator that is known for use in the manufacture foods and emulsions (column 1, lines 5-14). It would have been obvious at the time the invention was made to utilize the rotor and stator or Ross in an edible emulsion, which is a spoonable dressing. Further it would have been obvious to prepare a pre-emulsion prior to emulsifying the food product in order to assist in providing for a uniform final product. Thus in this case applicant is merely utilizing a known colloid mill, that has the rotor and stator of the claims, in a known process for making an emulsified dressing.

(11) Response to Argument

Appellant has argued that the claims are directed to a spoonable and pourable dressing. This is incorrect because appellant has amended the claims to delete these two qualities. Appellant urges that the reference does not show the step of forming a pre-mix of raw ingredients that includes an oil phase and an emulsifier phase. This is disagreed with as note example 1 in Trainor. Here the starch phase is made, then everything but the oil is added to form an "emulsifier phase". Then the oil is added and mixed in. Finally the pre-mixed ingredients are combined together and sent to a colloid mill. Thus the mixer in Trainor can be regarded as a pre-mix tank. Appellant urges that the specific amount of the ingredients is not shown in Trainor. This is disagreed with because in example 1, the amount of egg yolk is shown at the bottom of column 8 to be 0.7 pounds and the amount of salad dressing is shown at column 7, line 17 to be at 5.25 pounds. The calculated percentage of egg yolk, which is an emulsifier by itself, appears to fall within the levels that are set forth in the claims. Appellant refers to the amounts of the oil and additive ingredients but Trainor allows for up to 50% oil and fat in Table 1, at the bottom of column 6. Further Claim 1 does not require any specific amounts of these

ingredients. Claim 23 provides for three separate ranges of oil and the oil content in Trainor surely falls within the middle range.

Appellant argues that the specific features of the rotor and stator are critical to the invention. But no new or unobvious results are shown by appellant in support of this assertion. Appellant argues that the process provides for a dressing that can be fed in one pass through an in-line mixer/emulsifier. But there is no suggestion in Trainor that any additional process is needed in his mixer/emulsifier system. Thus no unobvious or unexpected results are contemplated by this recitation. Appellant refers to the gap measurements of the primary reference, but these features are provided by the secondary reference.

Appellant urges that examiner has improperly glossed over the important and critical claim limitations. This has been considered but is not persuasive. Appellant admits that the colloid mill of Ross is the mill that is used in his process. Surely one of ordinary skill in the art would be permitted to have at his disposal the known colloid mills that are available for use in foods. Appellant has urged criticality of the features of the process but has not shown any unexpected results from the use of the known elements of the process.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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November 4, 2003

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